

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	
)	NAL/Acct. No. MB-202141410034
Autaugaville Radio, Inc.)	FRN: 0006640254
)	
For Renewal of License for)	Facility ID No. 40900
WXKD(AM), Brantley, AL)	Application File No. 0000150480
)	
For Renewal of License for)	Facility ID No. 201248
W292HL, Troy, AL)	Application File No. 0000150482

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: August 2, 2021

Released: August 2, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the applications (Applications)¹ of Autaugaville Radio, Inc. (Licensee) for renewal of its licenses for WXKD(AM), Brantley, Alabama, and W292HL, Troy, Alabama (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find the Licensee apparently willfully violated section 73.3539 of the Commission's Rules (Rules)³ by failing to timely file license renewal applications for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand five hundred dollars (\$4,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁴ Applications for renewal of the Station's licenses should have been filed by April 1, 2021, the first day of the fourth full calendar month prior to August 21, 2021, the expiration date for the Stations' licenses.⁵ The Licensee did not file the Applications until June 18, 2021, and has provided no explanation for the untimely filing of the Applications.

¹ Application File Nos. 0000150480, 0000150482.

² This NAL is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the FCC's rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the NAL under section 0.283 of the Rules. See 47 CFR § 0.283.

³ See 47 CFR § 73.3539.

⁴ *Id.* § 73.3539(a).

⁵ See *id.* See also *Brantley Broad. Assoc., LLC*, Application File Nos. 0000094179, 0000094180, Letter Order (MB Aug. 21, 2020) (renewing Stations' licenses for a renewal period of one year); *Actions*, Public Notice, Report No. PN-2-200825-01, at 3, 4 (MB Aug. 25, 2020). The Licensee acquired the Stations' licenses from Brantley Broadcast Associates, LLC, on October 9, 2020. See *Broadcast Actions*, Public Notice, Report No. 49819, at 1, 2 (MB Sept. 9, 2020); Consummation Notice, Application File No. BAL-20200415AAJ (filed Oct. 13, 2020).

III. DISCUSSION

3. *Proposed Forfeiture.* This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act). Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁰

4. The Commission’s Forfeiture Policy Statement and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to timely file a required form.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

5. In this case, the Licensee failed to file timely renewal applications for the Stations and has not provided any explanation for the untimely filing of those applications. However, the Licensee did file the Applications prior to the expiration date for the Stations’ licenses. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose the full \$3,000 base forfeiture amount for the failure to file a timely renewal application for WTKD(AM), and a reduced forfeiture of \$1,500 for the failure to file a timely renewal application for W292HL.¹³

6. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁴ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁵ If, however, the licensee fails to meet that standard, the Commission may deny

⁶ 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

⁷ 47 U.S.C. § 312(f)(1).

⁸ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table I.

¹² 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 C.F.R. § 1.80(b)(10).

¹³ *See, e.g., Southern Broad. Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 13883 (MB 2009).

¹⁴ 47 U.S.C. § 309(k).

¹⁵ *Id.* § 309(k)(1).

the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁶

7. We find that, with respect to each of the Stations, the Licensee’s apparent violation of section 73.3539 of the Rules does not constitute a “serious violation” warranting designation of the renewal application for evidentiary hearing. Moreover, we find no evidence of violations at either of the Stations that, when considered together, constitute a pattern of abuse.¹⁷ Further, based on our review of the Applications, we find that each of the Stations served the public interest, convenience, and necessity during the preceding license term. We will therefore grant each of the Applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC’s rules, that Autaugaville Radio, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of four thousand five hundred dollars (\$4,500) for its apparent willful violations of section 73.3539 of the FCC’s rules.

9. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the FCC’s Rules, that, within thirty (30) days of the release date of this *NAL*, Autaugaville Radio, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),¹⁸ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁹

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the *NAL*/Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor

¹⁶ *Id.* §§ 309(k)(2), 309(k)(3).

¹⁷ For example, we do not find here that the Licensee’s operation of the Stations “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, para. 11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

¹⁸ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

¹⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

FRN).²⁰ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL/Account Number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account Number with the first two digits excluded—and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

11. Any request for making full payment over time under an installment plan should be sent to: Revenue and Receivables Operations Group—Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or by e-mail, ARINQUIRIES@fcc.gov.²¹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail, ARINQUIRIES@fcc.gov.

12. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's Rules.²² The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. Number referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.²³

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's

²⁰ Instructions for completing the form may be obtained at <https://transition.fcc.gov/Forms/Form159/159.pdf>.

²¹ See 47 CFR § 1.1914.

²² 47 CFR §§ 1.16 and 1.80(g)(3).

²³ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.²⁴

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Autaugaville Radio, Inc., c/o Roscoe Miller, P.O. Box 369, Greenville, AL 36037, and its counsel, Cary S. Tepper, Esq., Tepper Law Firm, LLC, 4900 Auburn Avenue, Suite 100, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁴ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).